IN THE UNITED STATES SUPREME COURT.

RIVERDALE COTTON MILLS,
Petitioner.

v.

ALABAMA & GEORGIA MFG. CO., *et al.*
Respondents.

Petition for Certiorari.

To the Honorable, the Supreme Court of the United States.

Your petitioner, Riverdale Cotton Mills, a corporation by its attorney, Thomas H. Watts, respectfully files its petition, praying for a certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, to certify for review by this Honorable Court, the record and proceedings in said Circuit Court of Appeals, in a cause wherein the Alabama & Georgia Manufacturing Company, a corporation, and Huguley Manufacturing Company, a corporation, were appellants, and your petitioner was appellee, and in which cause the decree of the Circuit Court of the United States for the Northern District of Georgia was reversed and a decree rendered commanding said Circuit Court of the United States for the Northern District of Georgia to dismiss the bill in said cause, without prejudice to the right of petitioner to make defense in a certain cause pending be-

tween the same parties and others, in the Chancery Court of Chambers ounty, in the State of Alabama. A certified copy of the record and proceedings in said United States Circuit Court of Appeals is herewith filed and made a part of this petition; and petitioner respectfully represents:

First.—This cause involves a question of jurisdiction, and was decided in the Circuit Court of Appeals by a divided court, Justices Shelby and McCormack concurring, and Justice Pardee dissenting in the decision rendered. The question of jurisdiction arises in this way: There was a suit of which the Circuit Court of the United States for the Northern District of Georgia had jurisdiction, not only of the person, but of the subject matter, as the complainant, Robinson, as trustee, was alleged to be a citizen of Alabama, and the defendants, the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were alleged to be citizens of Georgia, and the said bill was for the purpose of foreclosing a mortgage upon property situated partly in Alabama and partly in Georgia, which was operated as one indivisible manufacturing plant. In said cause, the said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were alleged to be corporations, organized under the laws of the State of Georgia. They admitted themselves to be such, and litigated for ten years in said cause, and were finally defeated and the mortgaged property sold and passed into the possession of the purchaser, Riverdale Cotton Mills, under the said sale, which was confirmed by said Circuit Court. Some two years after said Riverdale Cotton Mills had been placed in possession of said property, said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, alleging themselves to be corporations organized under the laws of Alabama, filed a new bill in the Chancery Court of Chambers County, Alabama, to relitigate all the questions litigated and decided in said Robinson suit above referred to. Said Riverdale Cotton Mills, after the filing of said suit in Chambers County, Alabama, filed the

bill in this case, (pp. 597-606, Record), ancillary to the proceedings in said Robinson suit, praying the protection of said Circuit Court of the United States for the Northern District of Georgia, in the possession of the property purchased in said Robinson suit. Such proceedings were had in the suit filed by said Riverdale Cotton Mills as that the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were enjoined from interfering with said Riverdale Cotton Mills as to said property and from prosecuting said suit in Chambers County, Alabama. From said decree an appeal was taken from said Circuit Court of the United States for the Northern District of Georgia to said United States Circuit Court of Appeals for the Fifth Circuit, where the decree above mentioned was rendered by a divided court, as aforesaid.

Second.—The right of the Riverdale Cotton Mills, which is a corporation organized under the laws of Georgia, to maintain its said bill against the defendants, rests upon the following state of facts, shown by the record of the Circuit Court of Appeals in this cause herewith filed: In January, 1891, one Robinson, as trustee, alleging himself to be, and who was, a citizen of Alabama, filed his bill in the Circuit Court of the United States for the Northern District of Georgia, (p. 2, et seq., Record), to foreclose a mortgage executed by Alabama & Georgia Manufacturing Company on January 2, 1884, to secure certain bonds issued by it. This mortgage conveyed the indivisible property operated as one concern, situated partly in Alabama and partly in Georgia. To the said Robinson bill, the Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company, both alleged to be corporations organized under the laws of Georgia, were made defendants. In the said Robinson bill, it was alleged that said Alabama & Georgia Manufacturing Company was insolvent and had ceased to do business; that under a decree rendered in a court of the State of Georgia, all of the property of said Alabama & Georgia Manufacturing Company had been sold in January, 1890, subject

to the mortgage above mentioned, to parties who conveyed the same to said Huguley Manufacturing Company, and that said Huguley Manufacturing Company had gone at once into, and were still in, the possession of all of said property covered by said mortgage. The Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company answered said bill of Robinson, as trustee, (p. 18, Record), admitting the citizenship, the sale of the property of the Alabama & Georgia Manufacturing Company, and the purchase and possession thereof by the Huguley Manufacturing Company subject to the said mortgage as alleged in said Robinson bill, and admitting that the said Alabama & Georgia Manufacturing Company had gone out of business; but said answer contested the right of the said trustee to have said mortgage foreclosed. The Huguley Manufacturing Company filed an amendment to its answer, p. 27, Record), alleging that it was the owner of the property mentioned in the Robinson mortgage subject to said mortgage. There was a decree in said Robinson suit, in May, 1892, foreclosing said mortgage and ordering all the property covered thereby in Georgia and Alabama sold to satisfy the said mortgage, and in the said decree, (p. 164, Record), the court found, among other things, the following: "In the year 1888, a bill in equity was filed in the State courts by other creditors and a receiver appoited for the factory property named, who, after holding same for a short time, sold said property by order of the court, the sale being made subject to the bonds and mortgage before alluded to. The purchasers at this sale afterwards organized themselves into what is known as the Huguley Manufactring Company." Under said decree of said Circuit Court of the United States for the Northern District of Georgia, said mortgaged property was sold and went into the possession of the purchaser, and said sale was confirmed, (p. 185, Record.) There was an appeal from said decree of sale, and said decree of sale was reversed in the Court of Appeals for the Fifth Circuit, May 30, 1893.

Third.—In May, 1895, there was a second decree of foreclosure and sale of said property, in which decree, (p. 563, Record), it was found by the court, among other things, "a mortgage under which the property was sold, was made by the Alabama & Georgia Manufacturing Company in January, 1884. Subsequently, by reason of some litigation in the Superior Court, the property of the Alabama & Georgia Manufacturing Company went into the hands of a receiver and was sold, and bought by persons who afterwards organized the Huguley Manufacturing Company, they buying at the receiver's sale, subject to the mortgage of Robinson, trustee." There was an appeal from said second decree to the Circuit Court of Appeals, where said decree was affirmed in January, 1896. After the second appeal, on the petition of Huguley Manufacturing Company, (p. 200, Record), a decree was rendered in the Circuit Court of the United States for the Northern District of Georgia, requiring Robinson, as trustee, to credit on the debt secured by the mortgage, the value of the use and occupation of the property between the times of the first and second sales. In March, 1896, the Circuit Court for the Northern District of Georgia passed an order requiring the second foreclosure sale, which had been decreed but stopped by the second appeal, to be proceeded with, and said property was sold under said last decree in September, 1898. At said sale, L. Lanier, acting for Riverdale Cotton Mills, the petitioner, became the purchaser of all of said property of the Alabama & Georgia Manufacturing Company in Georgia and Alabama, and the said sale was confirmed, and petitioner was put into possession of all of said property There was a third appeal to the Circuit Court of Appeals, where the decrees and orders of the Circuit Court were affirmed in May, 1899. From this last decree of affirmance in said Circuit Court of Appeals, an appeal was sued out to the Supreme Court of the United States, which last named court dismissed said appeal on the 24th day of February, 1902.

Fourth.—In June, 1901, said Alabama & Georgia Manufacturing Company, and Huguley Manufacturing Company, alleging themselves to be corporations organized under the laws of Alabama filed their bill, (pp. 610-624, Record), in the Chancery Court of Chambers County, Alabama, against said Robinson as trustee, Riverdale Cotton Mills and other corporations, in which bill it was alleged, in substance, that all of the proceedings in the said cause of Robinson, as trustee, against Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, in the Circuit Court of the United States for the Northern District of ~~Alabama~~, were void, on the grounds, principally, that all or some of the property described in the mortgage executed by Alabama & Georgia Manufacturing Company to Robinson, as trustee, is situated in Alabama, and that said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were corporations organized under the laws of Alabama, and that said Circuit Court of the United States for the Northern District of Georgia never acquired jurisdiction of said two corporations, as organized in Alabama, and never acquired jurisdiction of their property in Alabama, and that the decree by which said mortgage was foreclosed, said property sold and Riverdale Cotton Mills placed in possession as purchaser, was void. The said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company sought in said Chambers County, Alabama, suit, to hold said Riverdale Cotton Mills and others responsible for the rents of said property since the sale of said property under said foreclosure sale, sought to redeem said property under said mortgage, and, in fact, sought to reopen and relitigate all of the questions settled and adjudicated in said Robinson suit.

Fifth.—After the filing of, and service of process on, said Chambers County suit, and after demurrer had been filed to said bill, and motion made to dismis it for the want of equity, said Riverdale Cotton Mills filed its bill in this case, ancillary to the proceedings in said

Robinson suit, (pp. 597-624, Record), setting forth in substance all of the proceedings in the case of Robinson, as trustee, against the Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company. The said ancillary bill was filed against said Alabama & Georgia Manufacturing Company and the Huguley Manufacturing Company as Georgia corporations, and did not admit said corporations to have been also organized under the laws of Alabama. Said ancillary bill informed said Circuit Court of the United States for the Northern District of Georgia of the effort made by said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company, by their bill filed in Chambers County, Alabama, to retry and treat as a nullity all of the matter adjudicated against them in said case of Robinson, as trustee, against said two corporations in the Circuit Court of the United States for the Northern District of Georgia. In this ancillary proceeding, said Riverdale Cotton Mills prayed, (p. 605, Record), said Circuit Court of the United States for the Northern District of Georgia to protect said Riverdale Cotton Mills in the possession of said property, and to enjoin said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said suit in Chambers County, Alabama, and from prosecuting any other suit of like nature, and from interfering, in any manner, with said Riverdale Cotton Mills in the possession and enjoyment of said property. An order was issued in said ancillary proceeding, (p. 626, Record), by said Circuit Court of the United States for the Northern District of Georgia, requiring said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company to show cause why they should not be enjoined, as prayed for in said ancillary bill, and restraining said two corporations, in the (mean time), from proceeding with said Chambers County suit. Said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company filed an answer, (pp. 629-660, Record), in which they set up that each of said corporations had been incorporated

under the laws of Alabama; that said Alabama & Georgia Manufacturing Company had also been incorporated under the laws of Georgia, and that it was only as a Georgia corporation that it had been sued in said Robinson suit, and that the proceedings in said Robinson suit did not bind it as an Alabama corporation. Said answer also set up that said Huguley Manufacturing Company had never been incorporated under the laws of Georgia. It was further pleaded that the proceedings in said Robinson suit were void, and that said Circuit Court of the United States for the Northern District of Georgia, had no jurisdiction of said ancillary bill.

Sixth.—There was no evidence, (p. 665, Record), introduced in said ancillary proceedings, except the record in said Robinson suit, and there was a final decree, (p. 665, Record), in said ancillary proceedings in favor of said Riverdale Cotton Mills, and among other things, enjoining said Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company from prosecuting said Chambers County, Alabama, suit, and from interfering with the enjoyment and possession of said Riverdale Cotton Mills of said property purchased by it under said foreclosure sale in said Robinson suit. From said last mentioned decree, the appeal in this cause above referred to was prosecuted to the Circuit Court of the United States for the Fifth Circuit, which Court reversed, by a divided court, the said decree of the Circuit Court of the United States for the Northern ~~Division~~ District of Georgia in favor of said Riverdale Cotton Mills, and ordered said ancillary bill dismissed as aforesaid; holding that said Circuit Court of the United States for the Northern District of Georgia had no jurisdiction of said ancillary bill filed by said Riverdale Cotton Mills; holding that said proceeding by said Riverdale Cotton Mills was not an ancillary but an original proceeding and holding that said Alabama & Georgia Manufacturing Company, as an Alabama corporation, was not bound by said proceedings in said Robinson suit.

Wherefore, petitioner prays that a writ of certiorari

issue from this Honorable Court, directing that the record and proceedings in said Circuit Court of Appeals for the Fifth Circuit, be certified to this court for its review of the decision and judgment of said Circuit Court of Appeals in the said cause, where Alabama & Georgia Manufacturing Company and Huguley Manufacturing Company were appellants, and petitioner, Riverdale Cotton Mills, was appellee.

Petitioner further prays this Honorable Court to review and annul said judgment of reversal in said cause, and to award such judgment and decree in the said cause as right and justice may demand; and petitioner will ever pray, etc.

Thos. H. Watts,

Attorney for Petitioner.

I hereby certify that the rulings of said Circuit Court of Appeals herein set forth are, in my mind, erroneous, and that this petition is not filed for delay.

Thos. H. Watts,

Attorney for Petitioner.

To Marion Erwin,

Attorney for Respondents.

You will take notice that I will present the foregoing petition for a certiorari, to the Supreme Court of the United States in the City of Washington, D. C., on Monday, the 14th day of March, 1904, or as soon thereafter as the said Court will receive the same.

Thos. H. Watts,

Attorney for Petitioner.

I hereby acknowledge service of the foregoing petition, and of the time it will be presented to the Supreme Court of the United States, together with a copy of said petition.

Attorney for Respondents.